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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,441	10/21/2003	James P. Kunz	46982.0004	3706
7590 06/18/2004				
L. Grant Foster HOLLAND & HART LLP P.O. Box 8749 Denver, CO 80201		EXAMINER DOUGLAS, STEVEN O		
		ART UNIT PAPER NUMBER 3751		

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,441

Applicant(s)

KUNTZ, JAMES P.

Examiner

Steven O. Douglas

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 19 and 20 is/are allowed.
6) ☒ Claim(s) 1,12-16,21,22,25,26,28 and 30 is/are rejected.
7) ☒ Claim(s) 2-11,17,18,23,24,27 and 29 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10212003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,21,22,25,26 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuntz'876.

The Kuntz reference discloses an aircraft defueling apparatus comprising a vacuum fuel tank 52, a defueling hose 56, a defueling fitting 10 (see Fig. 2), and a vacuum generator or assembly 54. In regard to Applicant's limitation of a first and second generator, Applicant's attention is directed to col. 4, lines 37-42 where it is contemplated that the vacuum outlet 26 associated with the defueling fitting can be directly communicated with a manually-activated portable vacuum pump such as one for lifting glass panes (i.e. *a second separate vacuum generator*).

In regard to claims 21,22,25,26 and 30, the method as claimed would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3751

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuntz'876 in view of Kriewaldt.

The Kuntz reference discloses an aircraft defueling apparatus (*supra*), but does not disclose the vacuum generator or assembly being at least partially inserted into the vacuum fuel tank or holding tank. The Kriewaldt reference discloses another vacuum tank system having a vacuum generator 52 with associated tubing with float check valves 70 that are partially inserted into an associated holding tank to prevent liquid from being drawn into the vacuum generator when the tank is full. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tubing associated with the vacuum generator 54 to have a portion inserted into holding tank 52 with an associated float check valve in view of the teachings of the Kriewaldt reference to prevent liquid from being drawn into the vacuum generator when the tank is full.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuntz'876 in view of Kriewaldt.

The Kuntz reference discloses an aircraft defueling apparatus (*supra*), but does not disclose the tank and defueling hose as being arranged such that fuel does not freefall any more than 6 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tank and defueling hose as being arranged such that fuel does not freefall any more than 6 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In re Aller, 105 USPQ 233.

Art Unit: 3751

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hannick and Gabrielyan et al. references pertain to other aircraft defueling systems.

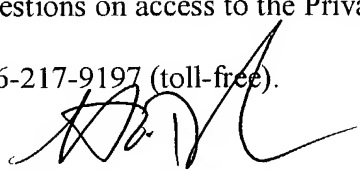
Claims 2-11,17,18,23,24,27 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19 and 20 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is 703-308-0891. The examiner can normally be reached on Wed-Fri 6:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven O. Douglas

Application/Control Number: 10/690,441

Page 5

Art Unit: 3751

Primary Examiner
Art Unit 3751
